

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 855

**Introduced by Assembly Members ~~Hagman and Ma~~ and *Hagman*
(Principal coauthor: Assembly Member Logue)
(Coauthor: Assembly Member Gorell)**

February 17, 2011

~~An act to amend Section 14250 of the Penal Code, relating to DNA testing.~~ *An act to amend Section 76104.6 of the Government Code, relating to county penalties.*

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as amended, ~~Hagman Ma. DNA testing.~~ *County penalties: forensic laboratories.*

Existing law, the DNA Fingerprint, Unresolved Crime and Innocence Protection Act, an initiative measure, requires an additional penalty of \$1 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified. The act requires the county board of supervisors to establish in the county treasury a DNA Identification Fund, into which the collected penalties are to be deposited. The act requires 25% of the moneys in the county fund to be transferred to the state's DNA Identification Fund and specifies the purposes for which funds in the county's and the state's DNA Identification Funds may be used, including to reimburse local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples, as specified. The act provides for its amendment by the Legislature if the amendments

further the act and are consistent with its purpose to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime solving and exonerating the innocent.

This bill would provide that, if authorized by a resolution of the board of supervisors, funds remaining in the county's DNA Identification Fund may be used to reimburse a local sheriff, police, district attorney, or regional state crime laboratory for expenditures and administrative costs made or incurred for utilizing an authorized laboratory for the processing and analysis of forensic identification samples and testimony related to that analysis, as specified.

The bill would declare that its provisions further the initiative act and are consistent with its purposes.

~~Existing law requires the Department of Justice to develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person. Existing law defines a high-risk missing person for purposes of that provision.~~

~~This bill would make a technical, nonsubstantive change to that definition.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 76104.6 of the Government Code is
- 2 amended to read:
- 3 76104.6. (a) (1) Except as otherwise provided in this section,
- 4 for the purpose of implementing the DNA Fingerprint, Unsolved
- 5 Crime and Innocence Protection Act (Proposition 69), as approved
- 6 by the voters at the November 2, 2004, statewide general election,
- 7 there shall be levied an additional penalty of one dollar (\$1) for
- 8 every ten dollars (\$10), or part of ten dollars (\$10), in each county
- 9 upon every fine, penalty, or forfeiture imposed and collected by
- 10 the courts for all criminal offenses, including all offenses involving
- 11 a violation of the Vehicle Code or a local ordinance adopted
- 12 pursuant to the Vehicle Code.
- 13 (2) The penalty imposed by this section shall be collected
- 14 together with and in the same manner as the amounts established
- 15 by Section 1464 of the Penal Code. The moneys shall be taken
- 16 from fines and forfeitures deposited with the county treasurer prior
- 17 to any division pursuant to Section 1463 of the Penal Code. The

board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the moneys collected pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).

(3) The additional penalty does not apply to the following:

(A) A restitution fine.

(B) A penalty authorized by Section 1464 of the Penal Code or this chapter.

(C) A parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(D) The state surcharge authorized by Section 1465.7 of the Penal Code.

(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

(2) On the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:

(A) In the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon.

(B) In the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon.

(C) In the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon.

(3) Funds remaining in the county's DNA Identification Fund shall be used only ~~to~~ *for the following purposes:*

(A) ~~To reimburse a local sheriff or other law enforcement agencies to collect agency for the collection of DNA specimens, samples, and print impressions pursuant to this chapter; for.~~

1 (B) For expenditures and administrative costs made or incurred
2 to comply with the requirements of paragraph (5) of subdivision
3 (b) of Section 298 of the Penal Code, including the procurement
4 of equipment and software integral to confirming that a person
5 qualifies for entry into the Department of Justice DNA and Forensic
6 Identification Database and Data Bank Program; ~~and to.~~

7 (C) *If authorized by a resolution of the county board of*
8 *supervisors, to reimburse a local sheriff, police, district attorney,*
9 *or regional state crime laboratory for expenditures and*
10 *administrative costs made or incurred for utilizing a laboratory*
11 *that meets state and federal requirements, including the Federal*
12 *Bureau of Investigation Quality Assurance Standards, and that is*
13 *accredited by an organization approved by the National DNA*
14 *Index System Procedures Board for the processing and analysis*
15 *of forensic identification samples and testimony related to that*
16 *analysis in order to expedite the analysis of crime scene samples*
17 *and proceed with a pending criminal action or investigation within*
18 *that county.*

19 (D) *To reimburse a local sheriff, police, district attorney, ~~and~~*
20 *or regional state crime ~~laboratories~~ laboratory for expenditures*
21 *and administrative costs made or incurred in connection with the*
22 *processing, analysis, tracking, and storage of DNA crime scene*
23 *samples from cases in which DNA evidence would be useful in*
24 *identifying or prosecuting suspects, including the procurement of*
25 *equipment and software for the processing, analysis, tracking, and*
26 *storage of DNA crime scene samples from unsolved cases.*

27 (4) The state's DNA Identification Fund shall be administered
28 by the Department of Justice. Funds in the state's DNA
29 Identification Fund, upon appropriation by the Legislature, shall
30 be used by the Attorney General only to support DNA testing in
31 the state and to offset the impacts of increased testing and shall be
32 allocated as follows:

33 (A) Of the amount transferred pursuant to subparagraph (A) of
34 paragraph (2) of subdivision (b), 90 percent to the Department of
35 Justice DNA Laboratory, first, to comply with the requirements
36 of Section 298.3 of the Penal Code and, second, for expenditures
37 and administrative costs made or incurred in connection with the
38 processing, analysis, tracking, and storage of DNA specimens and
39 samples including the procurement of equipment and software for
40 the processing, analysis, tracking, and storage of DNA samples

1 and specimens obtained pursuant to the DNA and Forensic
2 Identification Database and Data Bank Act of 1998, as amended
3 by Chapter 6 (commencing with Section 295) of Title 9 of Part 1
4 of the Penal Code, and 10 percent to the Department of Justice
5 Information Bureau Criminal History Unit for expenditures and
6 administrative costs that have been approved by the Chief of the
7 Department of Justice Bureau of Forensic Services made or
8 incurred to update equipment and software to facilitate compliance
9 with the requirements of subdivision (e) of Section 299.5 of the
10 Penal Code.

11 (B) Of the amount transferred pursuant to subparagraph (B) of
12 paragraph (2) of subdivision (b), funds shall be allocated by the
13 Department of Justice DNA Laboratory, first, to comply with the
14 requirements of Section 298.3 of the Penal Code and, second, for
15 expenditures and administrative costs made or incurred in
16 connection with the processing, analysis, tracking, and storage of
17 DNA specimens and samples including the procurement of
18 equipment and software for the processing, analysis, tracking, and
19 storage of DNA samples and specimens obtained pursuant to the
20 DNA and Forensic Identification Database and Data Bank Act of
21 1998, as amended.

22 (C) Of the amount transferred pursuant to subparagraph (C) of
23 paragraph (2) of subdivision (b), funds shall be allocated by the
24 Department of Justice to the DNA Laboratory to comply with the
25 requirements of Section 298.3 of the Penal Code and for
26 expenditures and administrative costs made or incurred in
27 connection with the processing, analysis, tracking, and storage of
28 DNA specimens and samples including the procurement of
29 equipment and software for the processing, analysis, tracking, and
30 storage of DNA samples and specimens obtained pursuant to the
31 DNA and Forensic Identification Database and Data Bank Act of
32 1998, as amended.

33 (c) On or before April 1 in the year following adoption of this
34 section, and annually thereafter, the board of supervisors of each
35 county shall submit a report to the Legislature and the Department
36 of Justice. The report shall include the total amount of fines
37 collected and allocated pursuant to this section, and the amounts
38 expended by the county for each program authorized pursuant to
39 paragraph (3) of subdivision (b). The Department of Justice shall

1 make the reports publicly available on the department's Internet
2 Web site.

3 (d) All requirements imposed on the Department of Justice
4 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence
5 Protection Act are contingent upon the availability of funding and
6 are limited by revenue, on a fiscal year basis, received by the
7 Department of Justice pursuant to this section and any additional
8 appropriation approved by the Legislature for purposes related to
9 implementing this act.

10 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
11 and Innocence Protection Act, the Legislature shall lend the
12 Department of Justice General Fund in the amount of seven million
13 dollars (\$7,000,000) for purposes of implementing the act. The
14 loan shall be repaid with interest calculated at the rate earned by
15 the Pooled Money Investment Account at the time the loan is made.
16 Principal and interest on the loan shall be repaid in full no later
17 than four years from the date the loan was made and shall be repaid
18 from revenue generated pursuant to this section.

19 (f) Notwithstanding any other ~~provision of law~~, the Controller
20 may use the state's DNA Identification Fund, created pursuant to
21 paragraph (2) of subdivision (b), for loans to the General Fund as
22 provided in Sections 16310 and 16381. Any such loan shall be
23 repaid from the General Fund with interest computed at 110 percent
24 of the Pooled Money Investment Account rate, with the interest
25 commencing to accrue on the date the loan is made from the fund.
26 This subdivision does not authorize any transfer that will interfere
27 with the carrying out of the object for which the state's DNA
28 Identification Fund was created.

29 *SEC. 2. The Legislature hereby finds and declares that the*
30 *amendments made by this act to Section 76104.6 of the Government*
31 *Code further the DNA Fingerprint, Unresolved Crime and*
32 *Innocence Protection Act as enacted by the approval of Proposition*
33 *69 at the November 3, 2004, general election, and is consistent*
34 *with the act's purposes.*

35 ~~SECTION 1. Section 14250 of the Penal Code is amended to~~
36 ~~read:~~

37 ~~14250. (a) (1) The Department of Justice shall develop a DNA~~
38 ~~database for all cases involving the report of an unidentified~~
39 ~~deceased person or a high-risk missing person.~~

1 ~~(2) The database required in paragraph (1) shall be comprised~~
2 ~~of DNA data from genetic markers that are appropriate for human~~
3 ~~identification, but have no capability to predict biological function~~
4 ~~other than gender. These markers shall be selected by the~~
5 ~~department and may change as the technology for DNA typing~~
6 ~~progresses. The results of DNA typing shall be compatible with~~
7 ~~and uploaded into the CODIS DNA database established by the~~
8 ~~Federal Bureau of Investigation. The sole purpose of this database~~
9 ~~shall be to identify missing persons and shall be kept separate from~~
10 ~~the database established under Chapter 6 (commencing with~~
11 ~~Section 295) of Title 9 of Part 1.~~

12 ~~(3) The Department of Justice shall compare DNA samples~~
13 ~~taken from the remains of unidentified deceased persons with DNA~~
14 ~~samples taken from personal articles belonging to the missing~~
15 ~~person, or from the parents or appropriate relatives of high-risk~~
16 ~~missing persons.~~

17 ~~(4) For the purpose of this database, "high-risk missing person"~~
18 ~~means a person missing as a result of a stranger abduction, a person~~
19 ~~missing under suspicious circumstances, a person missing under~~
20 ~~unknown circumstances, or if there is reason to assume that the~~
21 ~~person is in danger, or deceased, and that person has been missing~~
22 ~~more than 30 days, or less than 30 days in the discretion of the~~
23 ~~investigating agency.~~

24 ~~(b) The department shall develop standards and guidelines for~~
25 ~~the preservation and storage of DNA samples. Any agency that is~~
26 ~~required to collect samples from unidentified remains for DNA~~
27 ~~testing shall follow these standards and guidelines. These~~
28 ~~guidelines shall address all scientific methods used for the~~
29 ~~identification of remains, including DNA, anthropology,~~
30 ~~odontology, and fingerprints.~~

31 ~~(c) (1) A coroner shall collect samples for DNA testing from~~
32 ~~the remains of all unidentified persons and shall send those samples~~
33 ~~to the Department of Justice for DNA testing and inclusion in the~~
34 ~~DNA databank. After the department has taken a sample from the~~
35 ~~remains for DNA analysis and completed all DNA testing, the~~
36 ~~remaining evidence shall be returned to the appropriate local~~
37 ~~coroner.~~

38 ~~(2) After a report has been made of a person missing under~~
39 ~~high-risk circumstances, the responsible investigating law~~
40 ~~enforcement agency shall inform the parents or other appropriate~~

1 relatives that they may give a voluntary sample for DNA testing
2 or may collect a DNA sample from a personal article belonging
3 to the missing person if available. The samples shall be taken by
4 the appropriate law enforcement agency in a manner prescribed
5 by the Department of Justice. The responsible investigating law
6 enforcement agency shall wait no longer than 30 days after a report
7 has been made to inform the parents or other relatives of their right
8 to give a sample.

9 (3) ~~The Department of Justice shall develop a standard release~~
10 ~~form that authorizes a mother, father, or other relative to voluntarily~~
11 ~~provide the sample. The release shall explain that DNA is to be~~
12 ~~used only for the purpose of identifying the missing person and~~
13 ~~that the DNA sample and profile will be destroyed upon request.~~
14 ~~No incentive or coercion shall be used to compel a parent or~~
15 ~~relative to provide a sample.~~

16 (4) ~~The Department of Justice shall develop a model kit that~~
17 ~~law enforcement shall use when taking samples from parents and~~
18 ~~relatives.~~

19 (5) ~~Before submitting the sample to the department for analysis,~~
20 ~~law enforcement shall reverify the status of the missing person.~~
21 ~~After 30 days has elapsed from the date the report was filed, law~~
22 ~~enforcement shall send the sample to the department for DNA~~
23 ~~testing and inclusion in the DNA database, with a copy of the crime~~
24 ~~report, and any supplemental information.~~

25 (6) ~~All retained samples and DNA extracted from a living~~
26 ~~person, and profiles developed therefrom, shall be used solely for~~
27 ~~the purpose of identification of the deceased's remains. All samples~~
28 ~~and DNA extracted from a living person, and profiles developed~~
29 ~~therefrom, shall be destroyed after a positive identification with~~
30 ~~the deceased's remains is made and a report is issued, unless any~~
31 ~~of the following has occurred:~~

32 (A) ~~The coroner has made a report to a law enforcement agency~~
33 ~~pursuant to Section 27491.1 of the Government Code, that he or~~
34 ~~she has a reasonable ground to suspect that the identified person's~~
35 ~~death has been occasioned by another by criminal means.~~

36 (B) ~~A law enforcement agency makes a determination that the~~
37 ~~identified person's death has been occasioned by another by~~
38 ~~criminal means.~~

1 ~~(C) The evidence is needed in an active criminal investigation~~
2 ~~to determine whether the identified person's death has been~~
3 ~~occasioned by another by criminal means.~~

4 ~~(D) A governmental entity is required to retain the material~~
5 ~~pursuant to Section 1417.9.~~

6 ~~(7) Notwithstanding any other provisions of this section, upon~~
7 ~~the request of any living person who submits his or her DNA~~
8 ~~sample and profile pursuant to this section, including the parent~~
9 ~~or guardian of a child who submits a DNA sample of the child,~~
10 ~~the DNA sample shall be removed from the DNA database.~~

11 ~~(d) All DNA samples and profiles developed therefrom shall~~
12 ~~be confidential and shall only be disclosed to personnel of the~~
13 ~~Department of Justice, law enforcement officers, coroners, medical~~
14 ~~examiners, district attorneys, and persons who need access to a~~
15 ~~DNA sample for purposes of the prosecution or defense of a~~
16 ~~criminal case, except that a law enforcement officer or agency may~~
17 ~~publicly disclose the fact of a DNA profile match after taking~~
18 ~~reasonable measures to first notify the family of an unidentified~~
19 ~~deceased person or the family of a high-risk missing person that~~
20 ~~there has been an identification.~~

21 ~~(e) All DNA, forensic identification profiles, and other~~
22 ~~identification information retained by the Department of Justice~~
23 ~~pursuant to this section are exempt from any law requiring~~
24 ~~disclosure of information to the public.~~

25 ~~(f) (1) Any person who knowingly discloses DNA or other~~
26 ~~forensic identification information developed pursuant to this~~
27 ~~section to an unauthorized individual or agency, or for any purpose~~
28 ~~other than for identification or for use in a criminal investigation,~~
29 ~~prosecution, or defense, is guilty of a misdemeanor.~~

30 ~~(2) A person who collects, processes, or stores DNA or DNA~~
31 ~~samples from a living person that are used for DNA testing~~
32 ~~pursuant to this section who does either of the following is liable~~
33 ~~in civil damages to the donor of the DNA in the amount of five~~
34 ~~thousand dollars (\$5,000) for each violation, plus attorney's fees~~
35 ~~and costs:~~

36 ~~(A) Fails to destroy samples or DNA extracted from a living~~
37 ~~person pursuant to paragraph (6) of subdivision (e).~~

38 ~~(B) Discloses DNA samples in violation of subdivision (d).~~

39 ~~(g) (1) If a disclosure or failure to destroy samples described~~
40 ~~in paragraph (2) of subdivision (f) is made by an employee of the~~

1 Department of Justice, the department shall be liable for those
2 actions of its employee:

3 (2) Notwithstanding any other law, the remedy in this section
4 shall be the sole and exclusive remedy against the department and
5 its employees available to the donor of the DNA against the
6 department and its employees:

7 (3) The department employee disclosing DNA or other forensic
8 identification information or otherwise violating this section shall
9 be absolutely immune from civil liability under this or any other
10 law:

11 (h) It is not an unauthorized disclosure or violation of this
12 section to release DNA and other forensic identification
13 information as part of a judicial or administrative proceeding, to
14 a jury or grand jury, or in a document filed with a court or
15 administrative agency, or for this information to become part of
16 the public transcript or record of proceedings:

17 (i) In order to maintain computer system security, the computer
18 software and database structures used by the DNA laboratory of
19 the Department of Justice to implement this chapter are
20 confidential: